

REMARKS

This is a response under 37 CFR §1.116. The specific arguments herein, to the extent they were not presented earlier, are now presented because they are necessitated by the arguments made by the Examiner in the last office action. Since this response is being filed within two months of the mailing date of the final rejection, applicant respectfully requests an Advisory Action or a Notice of Allowance.

Claims 1-12, 14-22, and 24-27 are in this application. Claims 13 and 23 have been cancelled. Claims 11-12 and 14-17 have been allowed.

The Examiner objected to the drawings as failing to comply with 37 CFR §1.84(p)(5) because the drawings include reference character 211 which is not mentioned in the specification. Applicant notes that the specification was amended to mention reference character 211 (replacement optical network terminal 211) in the amendment filed on December 15, 2006 (and received by the PTO on December 19, 2006). As a result, the drawings satisfy the requirements of 37 CFR §1.84(p)(5).

The Examiner rejected claims 1-10 and 21-22 under 35 U.S.C. §103(a) as being unpatentable over applicant's admitted prior art in view of Kidder et al. (U.S. Patent Publication No. 2004/0031030 A1). For the reasons set forth below, applicant respectfully traverses this rejection.

Claim 1 recites:

"a memory to store a first identifier and a second identifier, the first identifier representing a first optical device that is connected to an end of a single network cable, the second identifier representing a second optical device that is to be connected to the end of the single network cable after the first optical device has been physically removed from the end of the single network cable."

Claims 6 and 21 recite, in relevant part, similar limitations.

In rejecting the claims, the Examiner argued that applicant's prior art FIG. 1 discloses every limitation of the structure of the claimed invention, except that applicant's prior art FIG. 1 does not disclose that the memory stores a second identifier which corresponds to a second device. (See Response to Arguments section.)

The Examiner then pointed to MPEP §2114 as stating that claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. Following this, the Examiner argued that the structure of applicant's admitted prior art and the structure of the claimed invention are identical, differing only in function.

Thus, the Examiner appears to argue that the claims are not patentable because the structure of applicant's admitted prior art is identical to the structure of the claimed invention, differing only in the function performed. Applicant notes, however, that the patentability of a computer-related invention is not based solely upon whether a claimed computer-readable medium (such as a memory) is structurally different from a prior art computer-readable medium. (See MPEP §2106(VI).)

In other words, the Examiner may not ignore functional limitations in the claims. If structural differences were required as suggested by the Examiner, no claims to a computer-readable medium would ever be allowable once claims to the physical structure of the particular medium were patented. As a result, the structural similarities between applicant's admitted prior art FIG. 1 and the claimed invention do not prevent patentability.

The Examiner next pointed to applicant's prior comments as an admission that what a memory stores is up to the user. The Examiner then argued that since a user

can configure a memory to store "a name," it is obvious that a memory can store a second identifier.

It is important to note that the issue in an obviousness determination is not whether a prior art memory "can" store a particular type of information, such as the second identifier required by the claims. Instead, the issue in an obviousness determination is what would motivate one skilled in the art to store a particular type of information, such as the second identifier required by the claims. Thus, even if it is assumed that a prior art memory "can" store the particular type of information required by the claims, this assumption does not prevent patentability.

Next, with respect to motivation, the Examiner restated the same argument set forth in the office action mailed on September 18, 2006. (Therefore, it would have been obvious for one of ordinary skill in the art . . . to have a second network device to be connected to an end point and configure the controller to store an identification number representing the device, as is it taught by Kidder, . . . in order to provide fault tolerance within a network.)

In the amendment filed on December 15, 2006 (and received by the PTO on December 19, 2006), applicant responded to this argument, stating in part:

"[t]hus, if a first physical ID value of Kidder is read to be the first identifier, a second physical ID value of Kidder is read to be the second identifier, and a network device 540 of Kidder is read to be the first optical device, then the Kidder reference fails to teach or suggest that the first and second identifiers represent two different optical devices as required by the claims. Instead, Kidder teaches that the first and second identifiers represent the same optical device, i.e., network device 540.

"As a result, even if table 134 in applicant's prior art FIG. 1 were expanded to include a second active identity number in view of the Kidder reference, the second active identity number would not represent a second optical device as required by the claims, but would instead represent the same optical device. Thus, it is not possible for applicant's admitted prior art in view

of Kidder to have first and second active identity numbers that represent two different optical devices as required by the claims.

"In addition, if a first physical ID value of Kidder is read to be the first identifier, a second physical ID value of Kidder is read to be the second identifier, a first card installed within network device 540 of Kidder is read to be the first optical device, and a second card installed within network device 540 of Kidder is read to be the second optical device, then the Kidder reference fails to teach or suggest that the second card is to be connected after the first card has been removed.

"As a result, even if table 134 in applicant's prior art FIG. 1 were expanded to include a second active identity number in view of the Kidder reference, the second active identity number would not represent a second optical device that is to be connected to the end of a cable after the first optical device has been removed as required by claims 1 and 6. Instead, the first and second active identity numbers would represent two cards that are both already installed in the network device.

"The portion of the Kidder reference cited by the Examiner does not teach that the physical IDs of cards not yet installed are stored in table 1014', but instead teaches that the physical ID of a card is stored in table 1014' after the card is installed. (See paragraph 0867 of Kidder.) As a result, the second active identity number would not represent a second card that is connectable or not yet installed to the end of the cable as required by claim 21, but instead would represent a second card that is already installed.

From what can be determined, the Examiner did not address these arguments. Therefore, since the Examiner did not address applicant's arguments, claims 1, 6, and 21 are patentable over applicant's prior art FIG. 1 in view of Kidder for the reasons set forth above and in the amendment filed on December 15, 2006 (and received by the PTO on December 19, 2006). In addition, since claims 2-5, 7-10, and 22 depend either directly or indirectly from claims 1, 6, and 21, respectively, claims 2-5, 7-10, and 22 are patentable over applicant's prior art FIG. 1 in view of Kidder for the same reasons that claims 1, 6, and 21 are patentable over applicant's prior art FIG. 1 in view of Kidder.

The Examiner rejected claims 18-20 and 24 under 35 U.S.C. §103(a) as being unpatentable over applicant's admitted prior art FIG. 1 in view of Kidder et al. and further in view of Daudelin et al (U.S. Patent No. 6,591,389 B1). For the reasons set forth below, applicant respectfully traverses this rejection.

Claim 18 recites:

"A method of servicing a network, the network having a first optical device connected to an end of a single network cable to receive network traffic, the first optical device having a first identifier, the method comprising:

"associating a second identifier with the end of the single network cable so that the first optical device continues to receive network traffic, the second identifier representing a second optical device that is a replacement for the first optical device, the second optical device not being connected to the end of the single network cable when the second identifier is associated with the end of the single network cable; and

"dispatching a technician to the end of the single network cable to service the first optical device, the first optical device continuing to receive network traffic until the first optical device is disconnected from the network by the technician."

In rejecting claims 18 and 24, the Examiner argued that applicant's prior art FIG. 1 in view of the Kidder reference teaches the "associating a second identifier" element of claim 18, and the "associating a replacement network device" element of claim 24.

In the amendment filed on December 15, 2006 (and received by the PTO on December 19, 2006), applicant responded to this argument, stating in part:

"applicant's prior art in view of Kidder does not teach the "associating a second identifier" element and the "associating a replacement network device" element. As noted above, if a first physical ID value of Kidder is read to be the first identifier, a second physical ID value of Kidder is read to be the second identifier, and a network device 540 of Kidder is read to be the first optical

device, then the Kidder reference fails to teach or suggest that the first and second identifiers represent two different optical devices as required by the claims. Instead, Kidder teaches that the first and second identifiers represent the same optical device, i.e., network device 540. Thus, it is not possible for applicant's admitted prior art in view of Kidder to have first and second active identity numbers that represent two different optical devices as required by the claims.

"In addition, if a first physical ID value of Kidder is read to be the first identifier, a second physical ID value of Kidder is read to be the second identifier, a first card installed within network device 540 of Kidder is read to be the first optical device, and a second card installed within network device 540 of Kidder is read to be the second optical device, then the Kidder reference fails to teach or suggest that the second card is uninstalled when the second card is associated.

"As taught by Kidder, the physical ID of a replacement card is associated with a network device in the memory when, in response to an authentication, the NMS server receives the physical ID from the replacement card and the physical ID from a card that matches a physical ID stored in table 1014' shown in FIG. 64 of Kidder. Thus, the replacement card must be installed in the network device of Kidder before the physical ID of the card can be associated with the network device in the memory and, therefore, can not be uninstalled as required by claims 18 and 24.

"As a result, even if table 134 in applicant's prior art FIG. 1 were expanded to include a second active identity number in view of the Kidder reference, the second active identity number would not represent a second optical device that is not connected to the end of a cable when the second identifier is associated as required by claims 18 and 24. Thus, applicant's admitted prior art in view of the Kidder reference do not teach or suggest the "associating a second identifier" element.

From what can be determined, the Examiner did not address applicant's arguments. (The Examiner again pointed to paragraphs 0865-0866 of Kidder and asserted without discussion that Kidder teaches associating a second identifier with a second device.)

Therefore, since the Examiner did not address applicant's argument that applicant's admitted prior art in view of the Kidder reference does not teach or

suggest the "associating a second identifier" element, claims 18 and 24 are patentable over applicant's admitted prior art in view of Kidder. In addition, since claims 19-20 depend either directly or indirectly from claim 18, claims 19-20 are patentable over applicant's admitted prior art in view of Kidder for the same reasons as claim 18. Further, claims 18-20 and 24 are patentable over applicant's prior art FIG. 1 in view of Kidder and further in view of Daudelin for the same reasons that claims 18-20 and 24 are patentable over applicant's prior art FIG. 1 in view of Kidder (because applicant's prior art FIG. 1 in view of Kidder does not teach or suggest the "associating a second identifier" element).

The Examiner rejected claim 25 under 35 U.S.C. §103(a) as being unpatentable over applicant's admitted prior art in view of Kidder and Daudelin et al. and further in view of Qin et al. (U.S. Patent No. 6,646,777 B2). In rejecting the claims, the Examiner appears to argue that applicant's admitted prior art in view of Kidder and Daudelin et al. teach all of the limitations of claim 25 except for teaching that the functioning network device is fully functioning.

However, as indicated above, claim 24 is patentable over applicant's admitted prior art in view of Kidder and Daudelin. As a result, since claim 25 depends from claim 24, claim 25 is patentable over applicant's admitted prior art in view of Kidder and Daudelin et al. and further in view of Qin et al. for the same reasons that claim 24 is patentable over applicant's admitted prior art in view of Kidder and Daudelin.

The Examiner rejected claims 26-27 under 35 U.S.C. §103(a) as being unpatentable over applicant's admitted prior art in view of Kidder and Daudelin et al. and further in view of Neeley et al. (U.S. Patent Publication No. 2003/0012485 A1). In rejecting the claims, the Examiner appears to argue that applicant's admitted prior art in view of Kidder and Daudelin et al. teach all of the limitations of claim 24.

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However, as indicated above, claim 24 is patentable over applicant's admitted prior art in view of Kidder and Daudelin. As a result, since claims 26-27 depend from claim 24, claims 26-27 are patentable over applicant's admitted prior art in view of Kidder and Daudelin et al. and further in view of Neeley et al. for the same reasons that claim 24 is patentable over applicant's admitted prior art in view of Kidder and Daudelin.

Thus, for the foregoing reasons, it is submitted that all of the claims are in a condition for allowance. Therefore, the Examiner's early re-examination and reconsideration are respectively requested.

Respectfully submitted,

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EXPEDITED PROCEDURE REQUESTED

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